TAN HOON SENG & ANOR.

v.

MINISTER FOR HOME AFFAIRS & ANOR.

SUPREME COURT, KUALA LUMPUR
HASHIM YEOP SANI CJ (MALAYA)
MOHD. YUSOFF MOHAMED SCJ
GUNN CHIT TUAN SCJ
[SUPREME COURT CRIMINAL APPEAL NO. 05-51-89]
25 NOVEMBER 1989

ADMINISTRATIVE LAW: *Writ of habeas corpus - Material date for commencement of order - Section 6(1) of the Dangerous Drugs (Special Preventive Measures) Act - Rule of construction law of preventive detention - Whether to be construed strictly - Detention inconsistent with constitution - Effect.*

Both the appellants were detained separately pursuant to orders under s. 6(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 (the Act), which states that whenever the Minister after considering the report of investigation and the report of the enquiry officer is satisfied that a person has been or is associated with any activity relating to or involving the trafficking in dangerous drugs, the Minister may, if he is satisfied that it is necessary in the interest of public order that such person be detained, by order "direct that such person be detained for a period not exceeding two years **from the date of such order**".

The detention orders were dated and signed on 8 January 1978 by the Deputy Minister for Home Affairs and the detention was to take effect from 11 January 1987 in each case.

The two appellants, by separate notices of motion sought from the High Court writs of *habeas corpus* for their release from detention as the detention order contravened s. 6(1) of the Act.

Held:

[1] It is clear from these words "from the date of such order", that the material date for the commencement of the detention, is the date when the order is made and signed by the Minister and not any other date. In other words, the words, "from the date of such order", in s. 6(1) of the Act must mean what they say, that is from the date that the order is made and signed.

[2] There is a simple rule of construction that when the legislature changes the words of an enactment, must be taken *prima facie* that there was an intention to change the meaning.

[3] The law of preventive detention must be construed strictly and in the case of doubt the Court should lean in favour of the subject.

[4] A detention not in accordance with the law, is inconsistent with the fundamental right guaranteed by Art. 5(1) of the Constitution.

[Appeals allowed]

Cases referred to:

R. v. Buttle [1870] LR 1 CCR 248
Andrew s/o Thamboosamy v. Superintendent [1976] 2 MLJ 156
PP v. Koh Yoke Koon [1988] 1 CLJ (Rep) 269

Legislation referred to:
Dangerous Drugs (Special Preventive Measures) Act 1985, s. 6(1)
Emergency (Public Order and Prevention of Crime) Ordinance 1969, s. 4(1)
Internal Security Act 1960, s. 8(1)

For the appellants - Karpal Singh; M/s Karpal Singh & Co.
For the respondents - Balia Yusof bin Hj. Wahi; DPP

JUDGMENT

Hashim Yeop Sani CJ:

These two appeals were considered together because in both cases the appellants, Tan Hoon Seng and Ng King Chew, by separate notices of motion sought from the High Court for writs of *habeas corpus* for their release from detention based on the same ground which also became a common ground in the appeals.

Both the appellants were detained separately pursuant to orders under s. 6(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 (the Act). The respective orders were signed by the Deputy Minister for Home Affairs. The said orders of detention although made separately were dated on the same date, that is 8 January 1987.

As required by the Act the orders together with the grounds and allegations of fact were served on the appellants within the time prescribed.

Both the detention orders against the said Tan Soon Heng and Ng King Chew bore the words "ditahan selama dua tahun mulai dari 11 January 1987 di Pusat Pemulihan Akhlak, Pulau Jerejak, Pulau Pinang" in the body of the order. See p. 42 of the appeal record in respect of Tan Soon Heng and p. 40 of the appeal record in respect of Ng King Chew.

Thus although the detention orders were dated and signed on **8 January 1987** it is expressly stated in the body of the orders that the detention was to take effect from **11 January 1987** in each case.

The power of the Minister to make a detention order under the Act is conferred by s. 6(1) of the Act. The power under s. 6(1) of the Act is expressly stated in the following terms, that is to say that whenever the Minister after considering the report of investigation and the report of the enquiry officer is satisfied that a person has been or is associated with activity relating to or involving the trafficking in dangerous drugs, the Minister may, if he is satisfied that it is necessary in the interest of public order that such person be detained, by order "direct that such person be detained for a period not exceeding two years **from the date of such order**."

The Act was passed by Parliament in 1985. Prior to the passing of the Act there were similar statutory powers of preventive detention in existence namely the respective provisions in the Internal Security Act 1960 and the Emergency (Public Order and Prevention of Crime) Ordinance 1969.

In s. 8(1) of the Internal Security Act the power to order detention or restriction of persons is expressed in the following terms, that is to say that if the Minister is satisfied that the detention of any person is necessary with a view to preventing him from acting in any manner prejudicial to the security of Malaysia or any part thereof or to the maintenance of essential services or to the economic life of Malaysia he may make a detention order "directing that that person be detained for **any period not exceeding two years**."

In the Emergency (Public Order and Prevention of Crime) Ordinance 1969 there is a similar power of detention contained in s. 4(1) thereof where if the Minister is satisfied that with a view to preventing any person from acting in any manner prejudicial to public order it is necessary that that person should be detained, or that it is necessary for the suppression of violence or the prevention of crime involving violence that that person should be detained, the Minister shall make an order "directing that that person be detained for **any period not exceeding two years**."

It can be seen very clearly that the later law, that is the Act (of 1985) deviated from the previous two legislations on how the period of two years of detention shall be calculated.

The addition of the words "from the date of such order" must bear some significant meaning. It is clear from those words that the material date for the commencement of the detention is the date when the order is made and signed by the Minister. On this construction the period of two years must be calculated from the date that the order was made and signed by the Minister and not any other date.

It is not permissible under s. 6(1) of the Act for the Minister to specify a different date from the date of the order for the commencement of the detention unlike in the case of the previous two legislations where the Minister may from the language of the relevant provisions direct that a person be detained for a period not exceeding two years from a date as may be specified by the Minister.

In other words the words "from the date of such order" in s. 6(1) of the Act must mean what they say, that is from the date that the order is made and signed.

It is to be observed that the legislature did not use words like "from the date in such order" or "from the date **as may be specified** in such order" for that would have given the power to the Minister to specify a different date from the date of the order. The statute may even be silent on the date of commencement as in the case of the two other legislations referred to earlier.

There is a simple principle of construction and this principle was explained in an old case *R. v. Buttle* [1870] LR 1 CCR 248, at 252 where Blackburn J said:

> When the legislature changes the words of an enactment, no doubt it must be taken *prima facie* that there was an intention to change the meaning.

This is a fundamental principle of construction to adhere to unless there is any compelling reason in the context of the statute for the Court to construe otherwise. In this case there is none.

The law of preventive detention must be construed strictly and in the case of doubt the Court should lean in favour of the subject. See also *Andrew s/o Thamboosamy v. Superintendent of Pudu Prison, Kuala Lumpur* [1976] 2 MLJ 156.

Finally, as this Court stressed in *PP v. Koh Yoke Koon* [1988] 1 CLJ (Rep) 269 a detention not in accordance with law is inconsistent with the fundamental right guaranteed by Art. 5(1) of the Constitution.

On the above grounds we considered that the appeals should be allowed and writs of *habeas corpus* to be issued forthwith.

Also found at [1990] 1 CLJ 423